

service which meets or exceeds the Commission's service quality standards. He testified that adding ETCs will raise the size of the Federal USF and will increase the cost to CCRTC's member-customers. Additionally, Mr. Welp testified that it is possible for NPCR to refuse service to a potential customer if the request is not "reasonable." Mr. Welp testified that CCRTC provides service to each customer who requests service in CCRTC's service territory. He also testified that NPCR has not shown that customers in CCRTC's territory will enjoy improved service at lower rates if NPCR is granted ETC-status.

#### **E. NPCR Rebuttal Testimony**

Mr. Peabody filed rebuttal testimony to that provided by INECA, the OUCC and CCRTC. Mr. Peabody noted that, contrary to the testimony of INECA and OUCC, NPCR can provide the FCC's list of universal services in the areas in which it has requested designation, as well as satisfy all other ETC obligations. Mr. Peabody also testified that most of CCRTC's criticism of NPCR was based on the differences between the service offerings of NPCR and CCRTC and the differing technology, regulatory structures, and market dynamics confronting NPCR as compared to CCRTC. Mr. Peabody also testified that the FCC's rules contemplate such differences and the FCC has clearly stated that such a consideration cannot be held against it. In his view, Mr. Peabody suggested that CCRTC seeks to undermine the concept of competitive neutrality.

Mr. Peabody suggested that the other parties "rely on irrelevant and misguided arguments" in challenging the notion that NPCR's request would not serve the public interest. Mr. Peabody reiterated his view that rural customers are entitled to the full benefits of wireless service even though they live in areas that are costly to serve, and that the consumers, not LEC witnesses, should determine "whether a particular service offering is affordable or of 'high quality.'" Mr. Peabody stated that allowing NPCR to have access to federal universal service funding will, in the long run, provide consumers in small and rural markets with access to high quality services at comparable rates.

With respect to challenges regarding the provision of the FCC list of universal services, Mr. Peabody suggested that the "attack" is with respect to the amount of local usage included within NPCR's offerings. In response, Mr. Peabody restated his prior testimony that the FCC has not set a standard for minutes of use and, more recently, that unlimited usage should not be included within the core universal service elements. Thus, NPCR is in compliance, according to Mr. Peabody, since each package has a minute of use component built in and one offering is unlimited.

Mr. Peabody stated that NPCR provides single party service even though a customer may drop off the network when it is beyond the range of a NPCR tower. In Mr. Peabody's opinion, the FCC requirement addresses the length of the customer's transmission over a dedicated message path and when the transmission ends there is, by definition, no message path. As to access to operator services, Mr. Peabody indicated that the necessary trunking arrangements allowing access to operator services have now been activated for Indiana customers. With respect to equal access and INECA's suggestion of service parity, Mr. Peabody stated that the FCC recently ruled that equal access is not a supported service for the purposes of USF.

Mr. Peabody also challenged INECA's concerns regarding the ability for NPCR to lawfully terminate traffic to the INECA companies, since the agreements in place are only between NPCR and Ameritech and GTE. Mr. Peabody stated that its arrangements are with tandem operators and that these arrangements offer LATA-wide termination.

Mr. Peabody next addressed what he characterizes as "service area" issues. Mr. Peabody stated that NPCR licenses cover all of the affected RTCs' Study Areas and that the FCC does not require NPCR to serve every customer throughout a study area at the time of designation. With respect to concerns regarding what a "reasonable request" for service is, Mr. Peabody noted that some requests may simply require the offering to the customer of a handset while the need to erect a tower to serve a customer would be unreasonable.

Mr. Peabody also stated that the FCC has concluded that federal USF funding levels are for it and the Joint Board to decide, not the Commission. Mr. Peabody rejected the concerns raised by INECA regarding the public interest analysis provided by NPCR, noting that its rationale included more than simply competition. Mr. Peabody stated that the appropriate inquiry is whether there is anything about these RTC areas that justifies refusing to provide those customers the full benefits of competition promised by Congress. Mr. Peabody noted that NPCR wants to utilize and expand its infrastructure, and that action provides greater innovation and service incentives to LECs. Mr. Peabody stated that the OUCC's concerns regarding NPCR's compliance with LEC requirements were a "red herring," since there are differences in service offerings, and that is not relevant to ETC designations. Similar expressions were made by Mr. Peabody with respect to CCRTC, stating that NPCR's designation as an ETC has been shown to "advance competition, improve services, and expand the availability of universal service."

Mr. Peabody concluded that the FCC has made clear that the public interest determination "should examine whether consumer benefits from designation outweigh demonstrated adverse impacts on consumers" and access to federal USF monies is required to ensure a level playing field. With respect to consumer benefits, Mr. Peabody referenced NPCR's expanded local calling areas and nationwide calling, as well services outside the core list of universal service such as Internet, email and text messaging. Mr. Peabody reiterated prior testimony regarding the quality of NPCR's service, and benefits from competition as a basis for the Commission to find that the public interest would be served by granting NPCR's ETC application.

Mr. Wood's rebuttal offered similar responses to the other parties' testimony. Characterizing the positions of INECA and CCRTC as "well worn arguments," he suggested that neither of these parties has presented fact or sound policy for their positions and that state regulators and the FCC have rejected their positions. Mr. Wood contended that the parties were seeking to "re-litigate" FCC decisions and asking the Commission to "ignore" portions of the FCC's May, 2001 USF decision. According to Mr. Wood, the relevant inquiry is whether NPCR offers "services that provide benefits to consumers" and whether there is "some issue fact or issue that is specific to [NPCR], or to the service areas within which it seeks an ETC designation in Indiana, that would outweigh those benefits."

With respect to factual questions, Mr. Wood suggested that the issues raised are based on speculation or factual assertions that have no bearing on the issues before the Commission. Mr. Wood noted that NPCR is seeking to invest in technology and facilities to provide competitive services. Mr. Wood also challenged INECA's suggestion regarding the scope of this proceeding, arguing that the "overarching issue" is not the size of the fund but rather whether the "existing mechanism encourages inefficient entry in the highest cost areas." Mr. Wood also disagreed with INECA's position that "service parity" is a relevant consideration, since competitive markets result in different service offerings, allowing carriers to tailor consumer offerings to the identified need. According to Mr. Wood, INECA's suggested service parity does just the opposite. With respect to service parity, Mr. Wood disagreed with the INECA position regarding the distinction between landline and mobile services in that NPCR wants to offer a service that directly competes with the landline offering. Similar challenges were made by Mr. Wood to CCRTC, suggesting that CCRTC's position forgets the fact that LECs have had many years to construct their networks with USF monies, and NPCR wants the same opportunity. If given this opportunity, according to Mr. Wood, NPCR would be a direct competitor of the LEC.

With respect to CCRTC's position regarding the level of NPCR's rates, Mr. Wood noted that if there is a concern regarding such levels, then customers will not purchase NPCR's service and no USF will be available to NPCR. But, according to Mr. Wood, CCRTC's view addressed only short run considerations because designating NPCR as an additional ETC would create incentives for efficiencies, thus leading to lower prices over time. In Mr. Wood's opinion, using USF monies to construct infrastructure rather than offset rates encouraged this result. Finally, Mr. Wood suggested that the price comparison that CCRTC is providing is not an "apples-to-apples" comparison and, in any event, if the prices of NPCR's services are too high, there should be no reason not to designate NPCR as an ETC because it would not be a "competitive threat" to CCRTC.

With respect to quality of service issues, Mr. Wood stated that the issues are moot because customers would not choose NPCR's service if the price were too high or service quality low, thereby not allowing NPCR to receive federal USF monies. Thus, according to Mr. Wood, the current process allows the marketplace to "sort out these issues," with the consumer being the ultimate decision maker. Mr. Wood stated that no additional requirements need be imposed on NPCR than those it meets today. Mr. Wood argued that INECA's "parity" position regarding unlimited calling should be rejected because NPCR should not be "criticized" for "offering services with a rate structure that permits customers to buy only what they need and that reflects the underlying costs to provide the functionality."

As to the size of the federal USF, Mr. Wood did not believe that such concerns were related to the instant application, and are being addressed by the FCC and Joint Board. Mr. Wood stated that while a smaller fund may be preferable, the growth in the size of the federal USF was considered by the FCC and fully recognized. Moreover, certain aspects of the federal USF (such as indexed caps) minimized growth. He also noted that the fund size is related to the use of embedded costs for calculating the high cost loop levels of federal USF disbursements rather than forward-looking costs. Similarly, the FCC's decisions regarding USF "portability" result in an increased size of the USF and to suggest that "best means of limiting growth of the

fund is to deny applications by competitive carriers for ETC status is disingenuous at best" since these policies were adopted based on the requests of RTCs. Characterizing "assurances of cost recovery in rural areas" as a "gift from the FCC" not present in a competitive market, Mr. Wood recognized that the "transition mechanism" is costly in the short term but it "can gradually wean the incumbent rural LECs over the period of time that it is in effect."

Mr. Wood characterized INECA's observation regarding state participation in the federal USF funding process as a "scare tactic." He stated that, based on his experience and participation in the process, no serious discussion of such outcome is taking place. Even though NPCR is providing service today, Mr. Wood noted that NPCR is committing to the ability to provide universal service, something it could not do absent federal USF disbursements. Mr. Wood stated that withholding federal USF monies to NPCR would not reflect how rural LECs constructed their networks over time and "even now, ILECs that have been providing service for over a century do not have ubiquitous networks." Consequently, the approach sought by NPCR was not fundamentally different, according to Mr. Wood.

With respect to utilizing the federal USF monies in Indiana, Mr. Wood stated that this issue is not of concern since the Universal Service Administrative Company ("USAC") has responsibility for fund distributions as well as auditing powers, the Commission has the ability to monitor this issue in its annual certification process, and the FCC has the authority to impose its own measures upon wireless licensees such as NPCR. Similarly, considerations regarding the need for cost-based showings by additional ETCs are not necessary, since the FCC and Joint Board are looking into this issue. If the concern is that the wireless provider has a lower cost structure than the LEC, according to Mr. Wood, that concern has "no validity from a public interest standpoint" because that advantage is not created by the USF portability rules and any advantage would "only encourage accelerated deployment of network facilities by the more efficient provider." Thus, Mr. Wood criticized INECA's concern by not explaining why the public interest would be served by "discouraging investment by a more efficient provider while encouraging investment by a less efficient provider." Mr. Wood also cited several public policy questions that he suggested highlight his concerns.

Why is it in the public interest for wireline carriers to serve these geographic areas at all? . . . . Why is it in the public interest to delay network deployment for the more efficient carrier? Why is it in the public interest to support, into perpetuity, the network of the less efficient carrier? Why should the designation of [NPCR] (one of those potentially lower cost providers) as an ETC be postponed while these conceptual issues are being debated in another forum? . . . .

For similar reasons, Mr. Wood disagreed with CCRTC's statements regarding non-cost based showings, suggesting that concerns regarding "cream skimming" have already been addressed by the FCC, and that CCRTC was given the ability to disaggregate its federal USF disbursements if it so chose. Finally, Mr. Wood disagreed with INECA's suggestion that the public interest finding be made "conditional" since, according to Mr. Wood, the "proper course of action in this case is to apply the law as it exists today" and he expected that if changes in the

federal USF process would be made, the FCC would, in any event, "undoubtedly provide guidance for the treatment of existing ETC designations."

Mr. Wood then responded to the OUCC concerns. First, Mr. Wood believed that costs of an ILEC would be avoided, and thus concerns over increased per-line cost levels may be overstated where the LEC loses customers to an additional ETC. Second, with respect to concerns that service is being provided by NPCR without USF disbursements, Mr. Wood noted that the objective is to allow NPCR to build out its network as the LECs have done, and, like the LECs, federal USF monies are important to allow this to occur. With respect to complying with existing service quality rules, Mr. Wood suggested that such rules are "not technology neutral," "may create artificial barriers to entry," and otherwise can be left to the marketplace to sort out. Finally, with respect to the OUCC's concern regarding the growth of the federal USF, he stated that the issue is not primarily caused by the designation of additional ETCs, and cannot be effectively addressed by lowering levels of federal USF disbursements to additional ETCs. In addition, the fund growth cannot be remedied by not designating more ETCs, but rather through changes in how the per-line disbursements are made.

#### **5. Commission Findings.**

The evidence in the record establishes that NPCR meets the eligibility criteria for ETC designation as contained in Section 214(e)(1), as set out more fully below.

##### **A. Petitioner is a Common Carrier**

The first requirement for ETC designation is status as a common carrier under federal law. A "common carrier" is generally defined in 47 U.S.C. § 153(10) as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either wire or radio technology. The FCC's regulations specifically provide that a specialized mobile radio service, such as that provided by NPCR, is a common carrier service. *See* 47 C.F.R. § 20.9(a)(4). NPCR is therefore a "common carrier" for purposes of obtaining ETC designation under 47 U.S.C. § 214(e)(1). (Pet. Ex. 3, p. 6.)

##### **B. Petitioner Provides Each of the FCC's Supported Services**

The record evidence confirms that NPCR's network can provide each of the supported services required of an ETC, and NPCR will offer all of those services to its universal service customers once designated an ETC. (Pet. Ex. 3, p. 7.)

i. Voice-grade access to the public switched telephone network. The FCC concluded that voice-grade access means the ability to make and receive phone calls, within the 300 to 3000 Hertz frequency range. 47 C.F.R. § 52.101(a)(1). Through its interconnection arrangements with local telephone companies, including Ameritech and GTE, all Indiana customers of NPCR are able to make and receive calls on the public switched network within the FCC's specified bandwidth. (Pet. Ex. 3, pp. 7-8.)

ii. Local usage. Beyond providing access to the public switched network, an ETC must include an amount of free local usage determined by the FCC as part of a

universal service offering. 47 C.F.R. § 54.101(a)(2). The FCC has not quantified a minimum amount of local usage required to be included in a universal service offering, and has declined to require that ETCs offer unlimited local usage.<sup>1</sup> NPCR will include local usage in its universal service offerings. (Pet. Ex. 3, p. 8.)

iii. Dual-tone, multi-frequency ("DTMF") signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Consistent with the principles of competitive and technological neutrality, carriers that provide signaling that is functionally equivalent to DTMF meet this service requirement. 47 C.F.R. § 54.101(a)(3). NPCR uses out-of-band digital signaling and in-band multi-frequency ("MF") signaling that is functionally equivalent to DTMF signaling. (Pet. Ex. 3, p. 8.)

iv. Single-party service or its functional equivalent. "Single-party service" means that only one party will be served by a subscriber loop or access line, in contrast to a multi-party line. 47 C.F.R. § 54.101(a)(4). *Universal Service Order*, ¶ 62. NPCR meets this requirement by providing a dedicated message path for the length of all customer calls. Although INECA witness Hazelett questioned whether NPCR provided this supported service (INECA Ex. 1, p. 8), Mr. Hazelett admitted on cross-examination that NPCR provides a dedicated message path in compliance with 47 C.F.R. § 54.101(a)(4). (Tr. 180.)

v. Access to emergency services. The ability to reach a public safety answering point ("PSAP") by dialing 911 is a required service in any universal service offering. Enhanced 911 or E911, which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), is only required if a PSAP is capable of receiving and utilizing such information, and requests the delivery of such information from a wireless provider. *Universal Service Order*, ¶¶ 72-73. The record reflects that NPCR currently provides all of its customers with access to emergency services by dialing 911 in satisfaction of this requirement. (Pet. Ex. 3, p. 9.) In addition, NPCR has deployed Phase I and Phase II E911 service requests from 17 PSAPs. (Pet. Ex. 3, p. 9.) NPCR is required to continue to implement Phase I and Phase II E911 requests in accordance with FCC rules.

vi. Access to operator services. Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). *Universal Service Order*, ¶ 75. NPCR demonstrated it meets this requirement by providing all of its customers with access to operator services provided by either the Petitioner or other entities (e.g. LECs, IXC, etc.). (Pet. Ex. 3, pp. 9-10; Pet. Ex. 5, p. 7.)

vii. Access to interexchange service. A universal service provider must offer consumers access to interexchange service to make and receive interexchange calls. 47

<sup>1</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, FCC 03-170, ¶ 14 (rel. July 14, 2003) ("*July 2003 Order*").

C.F.R. § 54.101(a)(7). NPCR presently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements the Company has with several interexchange carriers (IXCs). (Pet. Ex. 3, p. 10.) NPCR does not offer equal access to other interexchange carriers, but this is a requirement that the FCC has declined to require of ETCs. Despite requests by intervenors in this case, we decline to add it as a requirement.

viii. Access to directory assistance. The ability to place a call directly to directory assistance is a required service offering. 47 C.F.R. § 54.101(a)(8). NPCR meets this requirement by providing all of its customers with access to directory assistance by dialing "411." (Pet. Ex. 3, p. 10.)

ix. Toll limitation for qualifying low income consumers. An ETC must offer toll limitation services to qualifying Lifeline customers at no charge. 47 C.F.R. § 54.101(a)(9). "Toll limitation" is defined as "toll blocking" or "toll control" if a carrier is incapable of offering both, but as both "toll blocking" and "toll control" if a carrier can provide both. 47 C.F.R. § 54.400(d). NPCR is unable, at this time, to provide "toll control." The Company can and will offer "toll blocking" to its Lifeline customers, at no charge, as part of its universal service offerings. (Pet. Ex. 3, p. 10.)

### **C. Petitioner Will Satisfy Advertising Requirements**

The third requirement for ETC designation is that a carrier agrees to advertise the availability of the supported services and charges using media of general distribution. 47 U.S.C. § 214(e)(1). To date, neither the FCC nor this Commission has adopted any specific advertising guidelines for any ETC.<sup>2</sup> NPCR presented evidence that the Nextel brand name is currently advertised nationwide by NPCR and Nextel Communications, and that its 2002 advertising costs totaled approximately \$35.1 million. (Pet. Ex. 3, p. 13.) No party challenged NPCR's evidence that it can and will advertise through media of general distribution as required by law.

### **D. Petitioner's Designated ETC Service Areas**

Although NPCR presented different evidence as to its proposed ETC service areas, its late filed revised Exhibit 7 is Petitioner's final statement of the area included in its proposed Indiana ETC service territory and the areas in which it will advertise the supported services if its request for ETC status is granted. 47 U.S.C. § 214(e)(1). Section 214(e)(5) of the Act defines the term "service area" as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5). For an area served by a rural telephone company, 47 U.S.C. § 214(e)(5) provides that the term "service area" means the rural telephone company's "study area," unless and until the FCC and a state commission establish different service areas under the procedures set forth in 47 C.F.R. § 54.207(c)-(d). For an area served by a non-rural LEC, there is no "study area" requirement, so an ETC's designated service area can be established on a wire center basis. 47 U.S.C. § 214(e)(5).

---

<sup>2</sup> *Universal Service Order*, ¶ 148.

Petitioner's Exhibit 7 (Late Filed Revised) eliminated four rural LEC areas currently served by CCRTC from its proposed ETC service territory. NPCR indicated that it is licensed to provide service throughout all rural LEC study areas and non-rural LEC wire centers identified in the service areas shown on Petitioner's Exhibit 7 (Late Filed Revised).

Although NPCR's current coverage does not today extend throughout all of the areas in which it requests designation (*see* Pet. Ex. 3, Ex. SP-2), the FCC has held that an ETC applicant is not required to provide ubiquitous service at the time of its application, but instead must be given time to extend its network based on consumer requests.<sup>3</sup> NPCR's witness, Mr. Peabody, testified that with access to universal service support the NPCR would be able to build-out its Indiana network to better serve rural consumers. (Tr. 51.) NPCR's evidence demonstrated an intent and ability to provide service as an ETC, and to respond to reasonable requests for service as required by the FCC, in the areas identified on Petitioner's Exhibit 7 (Late Filed Revised).

#### **E. Commission Factors of Consideration**

We begin with our finding, which is that granting NPCR's petition is in the public interest. Numerous factors were taken into account, and we enumerate them here so that we may provide the requisite road map for subsequent applicants, as well as showing the support for our ultimate finding.

##### **a. Public interest analysis under 47 U.S.C. § 214(e)(2) for CETC designation in Specified Rural Service Areas**

To guarantee universal service, TA '96 required that all telecommunications carriers contribute into a Universal Service Fund ("USF") on an equitable and nondiscriminatory basis. 47 U.S.C. §254(f). This fund is used to act as a counterbalance for those carriers entering traditionally high cost areas, such as rural or insular areas. "Universal service contributions...support[] the expansion of, and increased access to, the public institutional telecommunications network." *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 427 (5<sup>th</sup> Cir. 1999)(*"TOPUC"*). The designation of an ETC provides the public with the certainty that there will be a carrier of last resort that provides services determined to be necessary. 47 U.S.C. §214. ETCs are required, at the risk of sanctions, to provide service to designated customers at affordable prices. 47 U.S.C. §214(d); *see also* *In re the Filing by GCC License Corp.*, 623 N.W.2d 474, 477 (S.D. 2001.)

In areas served by rural telephone companies, a competitive ETC can be designated only upon a finding that the designation will serve the public interest. 47 U.S.C. § 214(e)(2). Congress did not define or limit states' public interest tests under Section 214(e)(2), leaving it to

---

<sup>3</sup> *See In the Matter of Federal-State Joint Board on Universal Service - Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket 96-45, FCC 00-248, ¶ 17 (rel. Aug. 10, 2000) ("[A] telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.").



the states to set their own parameters for public interest analyses for rural service areas, consistent with the underlying purposes of the Act, namely:

To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

Pub. L. No. 104-104, 110 Stat. 56 (1996).

47 U.S.C. §254(b) sets out the standards under which we must examine whether or not granting NPCR ETC status would be in the public interest. Section 254(b)(3) of the Act provides that rural consumers should have access to services that are comparable to those available in urban areas:

Consumers in rural, insular, and high cost areas should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Apart from the promotion of competition, there has been no citation to any authority showing that there is a limitation on the factors that the Commission may take into account when making a public interest determination. *WWC Holding Co., Inc. v. Public Service Commission*, 442 Utah Adv. Rep. 8, 44 P.3d 714, 719 (2002). Under Section 214(e) of TA '96, the Commission is given the discretion of how many carriers to designate within a given area, but is not prohibited from imposing its own eligibility requirements. *TOPUC*, 183 F.3d at 418. This is consistent with the historical role states play in guaranteeing service quality standards for local service. *Id.* When a carrier applies to be an ETC, it should expect that the state commission will carefully scrutinize its petition. As the Joint Board has noted,

While a carrier need not actually provide the nine services required of ETCs at the time of application, they must make a case for how they will provide them, if they are unable to do so at the time. A new entrant can make a reasonable demonstration to the state commission of its capability and commitment to provide universal service without the actual provision of the proposed service. There are several possible methods for doing so, including, but not limited to: (1) a description of the proposed service technology, as supported by appropriate submissions; (2) a demonstration of the extent to which the carrier may otherwise be providing telecommunications within the state; (3) a description of the extent to which the carrier has entered into interconnection and resale agreements; or (4) a sworn affidavit signed by a representative of the carrier to assure compliance with the obligation to offer and advertise the supported services.

*In the Matter of Federal-State Joint Board on Universal Service*, 15 FCC Rcd 15168, 15178 (2000) (footnotes omitted); accord, *In the Matter of Federal-State Joint Board on Universal Service*, 17 FCC Rcd 23532, 23539 (2002); *GCC License Corp.*, 623 N.W. 2d at 481.

State commissions are granted the authority to make the designation because of a unique awareness of states' needs and problems. What is examined, however, is dependant upon the duty to the public. "[C]ustomers' interest, not competitors', should control agencies' decisions affecting universal service." *Washington Independent Telephone Assn. v. Washington Utilities and Transportation Comm.*, 110 Wn. 498, 41 P.3d 1212, 1218 (2002). "Public interest is a broad concept encompassing the welfare of present and future consumers, stakeholders, and the general public. The 'public interest' is broader than the goal of competition alone...[and] broader than the goal of advancing universal service." *Washington Independent Telephone Assn. v. Washington Utilities and Transportation Comm.*, 149 Wn.2d 17, 27, 65 P.3d 319, 324 n.3 (2003) (citations omitted.)

In addition, 47 U.S.C. §253(b) allows states to impose requirements on the provision of telecommunications services that are necessary to preserve universal service, protect public safety and welfare, ensure the continued quality of services, and protect the rights of consumers. *In the Matter of Federal-State Joint Board on Universal Service*, 15 FCC Rcd at 15176. This authority, however, is tempered by the requirement that such regulation be competitively neutral. *Id.* While there is the mandate that the State's additional regulations not be inconsistent with the FCC's rules, the statute contemplates additional state regulation that adopts "additional specific, predictable, and sufficient mechanisms" to preserve and advance universal service. 47 U.S.C. §254(f).

Given these explicit statutory mandates, it is clear that Congress intended that state commissions were to play a critical and necessary role in the determination of successor ETCs in rural areas. We intend to honor our obligation, and set out such factors as may guide ETC applicants in the future in making their filings. We turn, then, to the particulars supporting a finding that the designation of NPCR as an ETC is in the public interest.

NPCR's witnesses testified that access to federal universal service funding will allow NPCR to continue to extend its network throughout the state, and this network infrastructure will continue to be available to provide universal and advanced services to rural consumers in Indiana. NPCR's witness Mr. Peabody indicated that it appeared that a "minimal" extension of the network was already anticipated to improve service, and that if ETC status was granted, capital outlay plans could be formulated "in a few days." Tr. at 51. Further, Mr. Peabody testified that even relatively minor investments could improve service area reliability and increase a cell tower's footprint, such as the installation of new coaxial cable on a tower. Tr. at 52. Mr. Peabody recognized that such an extension of service is "the right thing to do" if NPCR is given ETC status, to assist consumers with emergency coverage and provide rural coverage. *Id.* at 52-53.

NPCR currently provides GPS location assistance for customers dialing 911 where requested by a PSAP. As NPCR continues to expand its network in Indiana this network infrastructure will be available to provide basic and enhanced services to its customers. (Pet. Ex. 3, p. 16.) Expansion of the network to provide ubiquitous coverage in Indiana rural areas is in the public interest, as cell phones for farmers become the ideal way to communicate from the "north forty."

NPCR presented evidence that its system also provides customers with the ability to roam nationwide on the Nextel network without having to pay any roaming fees, although its roaming capabilities are limited, in that they are only able to function with other Nextel equipment. Tr. at 103-104. In addition, NPCR provides larger local calling areas, nationwide long distance in some plans, its Direct ConnectSM walkie-talkie service, and mobile E911. (Pet. Ex. 3, p. 16.) NPCR explained that universal service funding is necessary for continued network build-out and expansion in Indiana in order to achieve the same levels of service in rural study areas as Nextel currently offers in urban wire centers. Tr. at 51. NPCR's witness, Mr. Wood, testified that these build-out decisions bring not only universal service funds, but also access to additional private capital that may not otherwise be economically justified. (Pet. Ex. 4, p. 11.)<sup>4</sup>

In discussing the various factors inherent in wireline vs. wireless carriers, NPCR witness Wood noted mobility as a positive aspect of wireless service. Tr. at 145-46. This was contrasted with the service quality advantage of wireline, nonetheless limited by its distance from the end of the wire.<sup>5</sup> *Id.* We favor an approach that places the issue of mobility of service in the context of one of many factors to be considered in the issue of determining ETC status. Further, the arguments in favor of competition, choice, mobility, and a larger local calling area are not supported by a showing that these factors are, per se, determinative in showing that ETC status is in the public interest. *WWC, supra*, 44 P.3d at 721. This is consistent with the mandate of 47 U.S.C. 253(b) that State regulation be administered in a competitively neutral fashion. To hold otherwise would have the effect of deeming wireline carriers "worse" because they lack mobility, or have a smaller calling area. The mandate of competitive neutrality requires an inquiry into whether a requirement imposed upon applicants – whether incumbents or competitors, wireline or wireless – has a competitively neutral effect. *In the Matter of Federal-State Joint Board on Universal Service*, 15 FCC Rcd at 15177. Therefore, for the Commission to remain competitively neutral on the designation of subsequent ETCs in rural areas, we must refrain from declaring a particular feature of a technology "better." The features of a particular system, regardless of wireline or wireless, must be presented in the context of how it serves the public interest.

Further, as NPCR points out, wireline carriers did not build out their system overnight, but did so over an extended period of time, while receiving both explicit and implicit subsidies. Tr. at 146. For us to decline to support wireless carriers in a similar fashion would violate the mandate of technological neutrality. NPCR committed, through its testimony and evidence, to increase service quality and extend its network so that "consumers [can] have substitute services[.]" Tr. at 146.

NPCR offered evidence that the funds collected by the designation of wireless CETCs is so small compared to ILEC funding that removing all wireless CETCs would not change the surcharge. (Tr. 120.) However, NPCR is wrong in its assertion that the Commission should not

---

<sup>4</sup> Mr. Wood testified: "In my experience, \$1 in USF support typically generates an additional \$3-\$5 in private capital." (Pet. Ex. 4, p. 11 n.10.)

<sup>5</sup> On re-direct, Mr. Wood stated that the NPCR technology produced an "extremely clear" voice quality, and that he meant that the ILECs had had a significant amount of time and support in which to create a quality network, which NPCR had not. Tr. at 158-59.

focus on the impact to the fund. Tr. at 119. The issue of the size of, and impact to, the universal service fund must be placed in context based on the proposed amount of funds flowing into the state. These are among a number of factors to be viewed by a State commission in making a public interest determination. NPCR does correctly assert that denial of a CETC petition is not the way to change the amount paid by consumers, but a change to the pricing base is. Tr. at 123. NPCR proffered this testimony when defending its designation's potential effect on the USF passed on to customers:

[D]eal[] with the contribution base...by dealing with economic versus embedded versus modified embedded cost recovery, you cannot impact that contribution factor to any significant decimal place by denying individual ETC designation [sic], CETC designation, or all ETC designations collectively...ETCs are currently receiving...less than 6 percent of the high cost funds, which would be less than 30 percent of the total fund. The remainder would be to ILECs. Wireless ETCs are receiving less than half of what's going to all CETCs. There is no way in the decimal places to which all of these calculations are carried out, what we'd call significant digits, to have an impact from CETC designations based on fourth quarter '03 projections.

Testimony of Don Wood, Tr. at 121-22.

This testimony represents the analysis the Commission expects in defense of an ETC petition. Applicants must be able to answer how, and in what terms, its presence as an ETC will affect the market as a whole, and the public interest generally. Mere defensive posturing does nothing to illuminate the Commission on the impact of a designation. Throwing up the Commission's lack of jurisdiction, for example, over the rates and entry of wireless carriers, is reflexive and ultimately non-productive. As NPCR correctly pointed out, current USF support is not based on actual per line need or cost, but on the modified embedded cost per line of the ILEC. Tr. at 124. To the extent that this represents an artificial construct that does not accurately reflect NPCR's costs (or that of any other wireless CETC applicant), it is not a factor over which NPCR has ultimate control, beyond filing comment with the FCC. It should, however, and has done so in this case, present evidence of what impact its designation may have.

NPCR has committed to expansion of coverage in the designated areas, seeking to make its service ubiquitous. In addition, it has examined its network sufficiently to present to the Commission those factors which it needs to improve, and in which areas it will focus. These details, as well as additional factors upon which we will expand more below, show that NPCR is approaching its potential ETC obligations with the requisite thoroughness and solemnity. These factors have convinced us that their petition should be granted.

#### **b. Network infirmities**

The premise of universal service contains within it recognition of network infirmities. But for those infirmities, the concept of universal service would be unnecessary. Hence, in an examination of an ETC designation request, an applicant must make specific offerings of proof as to how it will remedy any infirmities it may have identified in its system, or show how it will improve existing service with the USF funds it seeks.

NPCR asserts that the Commission has no jurisdiction over it in regard to service quality standards. From a public policy and public interest stand point, the certification of an ETC – designed to be, as necessary, the carrier of last resort – presents an assurance to the public that service will be universal, as promised. A carrier must show that system infirmities will be remedied, as subscribers could well find themselves without service at dire times. For example, the FCC has noted that the ability to call for and receive help in an emergency is the overarching reason for purchasing a wireless phone.<sup>6</sup> NPCR's witness showed his recognition of this precept in the following testimony:

That's, in fact, why this proceeding is so important, because the company's providing some services in some portions of these areas but does not have the opportunity absent USF Funding to make the service available at high quality ubiquitously through the area so that the customer sees that as a substitute for his basic telephone service.

Testimony of Don Wood, Tr. at 133-34.

In recognition of its' coverage "dead spots," NPCR has appropriately assured the Commission that such gaps in coverage will be filled if it is granted ETC status.<sup>7</sup> While service is presumed in dead spots under FCC regulations<sup>8</sup>, if the Commission is aware of them, they may certainly take notice of them and consider them in the context of a prospective ETC's application. Requiring this of an ETC is consistent with the Commissions' role in assuring that the public is receiving adequate service. Approval of a second ETC could appropriately be conditionally approved by the Commission based on an expectation that the second ETC will provide adequate service quality to its customers in the state of Indiana.

State commissions have examined ETC applicants' plans to serve customers and improve their networks. For example, in Arizona, the Commission has evaluated an ETC's plans for customers to receive service by utilizing various technical means.<sup>9</sup> The Arizona Commission observed that the ETC had been operating for approximately ten years and had worked with five Native American tribes to secure adequate cell sites on Native American lands.<sup>10</sup> Minnesota examined an ETC's plans to provide universal service to customers using .6-watt handheld phones or a 3-watt telephone and noted the applicant's commitment to building 15 specific cell sites in high-cost areas that it would not otherwise include in its network expansion plans because of cost issues.<sup>11</sup>

<sup>6</sup> *In the Matter of the Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 15 FCC Rcd 17442, 17454 n.59 (August 24, 2000).

<sup>7</sup> While the FCC has designated a wireless carrier even when dead spots were admitted, that certification was premised on remedying the specific dead spots identified by improving the network after certification. *In the Matter of Federal State Joint Board on Universal Service*, 17 FCC Rcd at 23538.

<sup>8</sup> 47 C.F.R. §22.911(6)(b).

<sup>9</sup> *See, Arizona Smith Bagley ETC Order* at 6.

<sup>10</sup> *Id.*

<sup>11</sup> *See Petition of Midwest Wireless Communications, L.L.C., for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*, OAH Docket No. 3-2500-14980-2, PUC Docket No. PT-6153/AM-02-

The Minnesota Public Utilities Commission found that the company was able to offer its services through approximately 200 cell sites in and around the state, pledged to build an additional 15 cell sites upon designation as an ETC, pledged to meet customer orders for new service through a variety of measures including additional cell sites, cell extenders, rooftop antennae, high-powered phones, and the resale of existing service, and was willing to address a customer's request for service by developing a schedule for extending service.<sup>12</sup> The Regulatory Commission of Alaska recently granted ETC status to a CMRS provider and stated that the provider need not prove its ability to construct facilities throughout every portion of the incumbent LEC's service area but must demonstrate that its system of providing service throughout the incumbent LEC's service area are *reasonable*.<sup>13</sup> The Alaska Commission found that a seven-step plan proposed by Alaska Digitel regarding customer service was reasonable.<sup>14</sup> All of these examples support the finding that ETCs can be held to service quality standards and oversight.

Numerous cases have held that requiring an ETC applicant to provide the required services prior to the grant of ETC status would work an anti-competitive outcome, as applicants would be forced to make outlays for services, unsure if such services would ever be requested or supported. However, in those cases where an applicant identifies such weaknesses in its system(s) that might prevent full implementation of a required service under 47 C.F.R. §54.101, we find that there is a requirement that the ETC applicant provide an affirmative statement of how and when the shortcoming is to be remedied. As an example, in the context of a request to extend the deadline for meeting E911 capability, the FCC recently advised Tier III wireless carriers as follows:

[T]he Commission should be able to make the factual determinations necessary to find good cause for granting the waiver if the carrier, as we have previously stated, provides 'concrete, specific plans to address the accuracy standards and ha[s] presented [its] testing data and other evidence to demonstrate its inability to meet the accuracy requirements'....Carriers should avoid blanket statements of technical infeasibility, instead providing technical data on particular portions of their network or pieces of equipment that are problematic.

*In the matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, FCC03-241, ¶26 (Released October 10, 2003).

---

686, Findings of Fact, Conclusions of Law, and Recommendation at 6, 11 (Minn. Office of Admin. Hearings Dec. 31, 2002) (*Minnesota ALJ ETC Recommendation*).

<sup>12</sup> See *Minnesota Midwest Wireless ETC Order* at 6.

<sup>13</sup> See *Alaska Digitel ETC Order* at 8-9.

<sup>14</sup> *Id.* The plan states that if customer is not in an area where the CMRS provider, Alaska Digitel, currently provides service, Alaska Digitel will: (1) Determine whether the customer's equipment can be modified or replaced to provide acceptable service; (2) Determine whether a roof-mounted antenna or other network equipment can be deployed at the premises to provide service; (3) Determine whether adjustments at the nearest cell site can be made to provide service; (4) Determine whether a cell extender or repeater can be employed to provide service; (5) Determine whether there are any other adjustments to network or customer facilities that can be made to provide service; (6) Explore the possibility of resale; (7) Determine whether an additional cell site can be constructed to provide services, and evaluate the costs and benefits of using high cost support to serve the number of customers.

In this cause, an identification of areas where signal strength was below that needed for a reliable signal enabled NPCR to specify where upgrades to service – in the form of new cell towers or even an installation of new coaxial cable – could be made with USF money. Further, NPCR has made assurances to the Commission that USF money received will be used to benefit Indiana services by expansion of its existing coverage. If an ETC applicant wishes to support the existence of universal service, it must have made plans, expressed to the Commission in explicit terms, to remedy those areas of its service that might be otherwise lacking.

We find that this is a good admonition to carriers, no matter what the technology used. Applicants must make a thorough review of their service offerings and determine what, if any, parts of the system must be upgraded to be consistent with the then-current FCC guideline for ETCs. In addition, a failing in a system, even if outside the ETC core services required, should be addressed by the applicant in specific terms as a focus for upgrade with potential USF funds.

**c. State's obligation to oversee the financial aspects of USF**

The FCC specifically mandated that state commissions certify that the federal USF funds are being used “only for the provision, maintenance and upgrading of facilities and services for which the support is intended,” consistent with 47 U.S.C. §254(e). “Absent such a certification, carriers will not receive such support.” *Id. In the Matter of Federal-State Joint Board on Universal Service*, 16 FCC Rcd 11224, ¶187 (2001); 47 C.F.R. §54.314.

In the context of setting a benchmark of statewide average costs, the FCC has noted that the use of a statewide average costs “reflects what we believe to be an appropriate policy decision that in such cases the state has the primary responsibility and demonstrated ability to ensure rate comparability.” *In the Matter of Federal-State Joint Board on Universal Service*, 17 FCC Rcd 20716, 20728 (2002).<sup>15</sup> Support is intended to ensure reasonable comparability of intrastate rates, and states have primary jurisdiction in that area. *Id.* at 20734; *In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC Rcd at 8842.

Hence, for a state to ensure rate comparability, it must review the rates of all ETCs it has certified. Absent such a comparison, the states have failed to meet their obligation to ensure that ETCs are using the funds to “achieve the goals of [TA '96.]” *In the Matter of Federal-State Joint Board on Universal Service*, 17 FCC Rcd at 20739. Therefore, NPCR (and any other ETC that comes before the Commission) must expect to have its tariffs examined.

This does not constitute the regulation of “the entry of or rates charged” by a wireless carrier. 47 U.S.C. §332(c)(3)<sup>16</sup>. Numerous courts have noted that even the imposition of a mandatory contribution to a state USF does not amount to rate regulation when applied by a state Commission to a wireless carrier. *TOPUC*, 183 F.3d at 431-432, citing *Sprint Spectrum L.P. v. State Corp. Commission*, 149 F.3d 1058, 1061 (10<sup>th</sup> Cir. 1998). Instead, this has been widely described as falling under the category of “other terms and conditions” that a state Commission may regulate regarding wireless carriers. 47 U.S.C. §332(c)(3).

<sup>15</sup> While the FCC made this decision in the context of non-rural rates, the analysis holds.

<sup>16</sup> States may, in fact, regulate the rates and entry of wireless carriers where they have replaced most of the wireline carriers in a market. However, that is not the case at bar.

In response to the question of whether the Commission may impose additional requirements on an ETC in the protection of the public interest, NPCR asserted that it is "concerned about non-applicable rules...[that] would get in the way of providing the service to our customers and the whole objective of expanding the network and providing excellent service to customers." Tr. at p. 107. However, NPCR properly recognizes the obligation of financial oversight, as reflected in the testimony of Mr. Wood, stating that the Commission must look "very carefully" at how ETCs of all stripes have spent the allocated funds. Tr. at 140-41. He goes on to say:

My experience has been that these support dollars don't represent total expenditures, that when they're available, they make a business case for rural entry that wasn't there before and that private capital follows them. So a hundred thousand in support might yield 3 million in new investment in those areas that now has a business case, that gets it over the hump.

*Id.*

While NPCR is correct in its assertion that the Commission does not regulate NPCR's rates, the Commission *does* have an affirmative duty to oversee the rates of ETCs, especially regarding Lifeline/Linkup tariffs. Without such oversight, the Commission cannot be assured that a carrier is not using its ETC status to competitive – and public – disadvantage. "An ETC is obliged, at the risk of financial sanctions, to serve designated customers at appropriate prices." 47 U.S.C. §214(d). State utility commissions are required to "determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof...." 47 U.S.C. §214(e)(3); *GCC License Corp.*, 623 N.W. 2d at 477.

Given this determination, we find that all ETCs are subject to the filing of Lifeline/Linkup tariffs, regardless of technology. This satisfies the requirement of competitive neutrality, as requiring wireline carriers to file such tariffs while exempting wireless carriers would work an inability to properly measure the marketplace of universal service.<sup>17</sup> The Commission cannot reasonably fulfill its statutory mandate to ensure that universal service is available at rates that are "just, reasonable, and affordable" without such filings. 47 U.S.C. §254(i). Further, this is not a requirement that is so "restrictive,"<sup>18</sup> to use NPCR's term, that it prohibits would-be entrants from entering the market. It is, in fact, regulation with a light hand.

Consistent with this duty, we also find that ETC applicants should affirmatively present what accounting protocols will be used to track and account for USF expenditures. The designation of an ETC creates both benefits and burdens on a telecommunications provider. While it gives the right to apply for USF funds, it also creates the concomitant requirement that such support be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. §254(e). In addition, the subsidy of competitive services by non-competitive services is prohibited in the provision of universal service. 47 U.S.C. §254(j). The Commission is charged with the obligation of establishing such

<sup>17</sup> *In the Matter of Federal-State Joint Board on Universal Service*, 17 FCC Rcd 22642 n.4 (2002)

<sup>18</sup> Tr. at 139-40.



"necessary cost allocation rules, accounting safeguards, and guidelines" to ensure that USF-funded services bear no more than a reasonable cost of the joint and common cost. *Id.* Without such oversight, the Commission cannot assure that NPCR, or any other ETC, is using USF funds in a manner consistent with the statutory mandate. We find that the requirement of tariff-filing and presentation of accounting protocols meet this definition and should be required of all ETCs under our jurisdiction.

Consistent with these requirements, we find that NPCR shall file reports with the Commission detailing its progress in the expansion and upgrading of service. Specifically, NPCR shall file its first report six (6) months from the date of this order, and annually thereafter, setting out the following:

- Its specific plan using USF funds for the "provision, maintenance and upgrading of facilities and services;
- Areas where signal strength is to be improved, with corresponding footprint redefinition;
- Timetable for implementation of new switches, towers, and all improvements to service that are set to be started on a date certain;
- Current status of previously reported projects and timelines;
- Number of complaints filed by Indiana customers with the FCC, IURC, or other regulatory entities;
- Number of requests for service in its designated Indiana service area that were unable to be completed due to lack of facilities or signal.

To the extent that such reports contain confidential matter that constitute trade secrets as defined under Indiana law, NPCR (and any future ETC subject to our jurisdiction) may request confidential treatment pursuant the Commissions' then-current policies.

#### **d. Competition**

Universal service and competition must be balanced; one must not be sacrificed to supplant or benefit the other. *Washington Independent Telephone Assn. v. Washington Utilities and Trans. Comm.*, 149 Wn.2d 17, 27, 65 P.3d 319, 324 (2003), citing *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 615 (5<sup>th</sup> Cir. 2000); see also *Washington Independent Telephone Assoc. v. Washington Utilities and Transportation Comm.*, 110 Wn. 498, 516, 41 P.3d 1212 (2002), citing *In the Matter of Federal-State Board on Universal Service*, 12 FCC Rcd at 8801-03; *In the Matter of Federal-State Joint Board on Universal Service*, 13 FCC Rcd at 5365. The purpose of the public interest requirement is not to protect rural telecommunications companies from competition, "but to ensure that rural areas receive the same benefits as urban areas." *In re the Application No. C-1889 of GCC License Corp. (Western Wireless)*, 264 Neb. 167, 172, 647 N.W.2d 45, 50 (2002). State commissions are granted the authority to determine whether

such certification is in the public interest. *In the Matter of Federal-State Joint Board on Universal Service*, 15 FCC Rcd 15168, 15184 n.6 (2000).

In fact, competition is but one element of the bundle that is universal service. TA '96 identified that competition is the only way to open the market and broaden the available choices to consumers. However, it is a means to an end – not the end itself. An examination of competition as it relates to CETCs must focus on whether the competitive force created by the certification of a particular carrier will benefit consumers by furthering the purpose of universal service.

The OUCC and Intervenors introduced evidence that competition for wireless service is not lacking in rural Indiana, with most areas already having access to competitive services from a number of different wireless service providers. Therefore, there was conflicting evidence on the issue of whether designating NPCR as an additional ETC in its proposed ETC service areas would actually increase the level of competition in Indiana. NPCR testified that the intervenors in this case had tried to make this cause “about competition,” shifting the focus from the proper inspection of NPCR’s specific petition for ETC status. Tr. at 113. As Mr. Wood stated, “it should be specific to the company’s application and to the areas in question. It’s not really a question of should we have competition.” Tr. at 137.

NPCR properly recognizes that the public interest inquiry does not focus on what is best for an individual carrier, but what the impact on consumers will be. Tr. at 132. Indiana has telephone service available in all areas, and by NPCR’s own admission there are at least three or more competitive wireless carriers in all rural areas of Indiana.<sup>19</sup> Tr. at 79. Hence, if we certify NPCR, we are not introducing service to previously unserved areas. If that were the test, no ETCs could be designated hence in Indiana. However, “the purpose of the public interest requirement of 47 U.S.C. §214(e) [is] not to protect rural telecommunications companies from competition but to ensure that rural areas receive the same benefits as urban areas.” *In re Application No. C-1889 of GCC License Corp. (Western Wireless)*, 647 N.W.2d at 50.

The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well. Moreover, excessive funding may itself violate the sufficiency requirements of the Act. Because universal service is funded by a general pool subsidized by all telecommunications providers – and thus indirectly by the customers – excess subsidization in some cases may detract from universal service by causing rates

---

<sup>19</sup> Seventy-five percent of the population has access to five or more wireless carriers, as stated by the FCC. *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 16 FCC Rcd 13350, 13355 (2001). The FCC goes on to note that due to the cap on frequency spectrums, “there are at least four different licensees in every market, and as a practical matter, there are generally five or more licensees in every market.” *Id.* at 13361.

unnecessarily to rise, thereby pricing some consumers out of the market... 'Sufficient' funding of the customer's right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy.

*Alenco*, 201 F.3d at 620-21 (emphasis in original).

As such, we must make a determination of whether NPCR's petition meets these various hurdles. This goes hand-in-hand with the requirement that an applicant show what it would do with the funds, if received. The oversight of public impact, in the form of potentially higher fees to consumers, or lower amounts to competitors, is within the purview of this Commission, and without this evidence our analysis cannot be complete.

If granted, NPCR has committed to becoming a carrier providing ubiquitous service in the designated areas – thereby extending the benefits known in urban areas to their rural counterparts. This is the promise that was made when the market was opened to competition – that additional carriers would enter the market with service alternatives. Further, NPCR provided an estimate that ETC designation would bring approximately \$13,000.00 per month, or \$156,000.00 per year. Tr. at 81. When that amount is placed in the context of NPCR's testimony that every dollar of USF money is more than matched by a carrier, this represents a significant investment in Indiana's telecommunications network, especially in rural areas. Such network extension has the potential for improvements by other carriers, as they compete for the public's business – the benefit of competition at its best.

Similarly, NPCR presented evidence that the certification of an Indiana CETC would have very low impact on Indiana consumers – that the change to the USF factor would have “to go out to seven or eight decimal places to find an impact from the designation of CETCs.” Tr. at 120. While NPCR maintains that an examination of fund impact is inappropriate for the Commission in this proceeding<sup>20</sup> (a statement with which we disagree), NPCR nonetheless came prepared to discuss the impact its designation might have on the USF fund. No less is to be expected from any ETC applicant. The potential impact on the USF is a topic properly before this Commission in its determination of whether an applicant's designation is in the public interest, and is part of the balancing the Commission must do when viewing the application through the lens of competition. We find that NPCR's commitment to expand its network, cure “dead spots” and become a reliable carrier of last resort is in the public interest, as well as its promise to provide the Commission with appropriate documentation on the utilization of funds. Their testimony shows a concerted effort to identify and remove impediments to service that is truly universal within the proposed areas.

#### e. Other Factors

There are other factors that make granting NPCR's petition in the public interest. At this juncture, NPCR is currently the carrier of choice for “over 10 Indiana colleges, public school and libraries, and local, state and federal government agencies, specifically law enforcement.” NPCR Petition, ¶8.D. Given the explicit direction that school and libraries receive support in the

---

<sup>20</sup> Tr. at 119.

context of universal service, supporting a carrier of choice in its attempt to expand and improve its network logically follows. Further, nothing can be closer to the heart of the public interest than improving service for those who serve in law enforcement. We need not belabor the point that of all subscribers, law enforcement needs consistent coverage and service. Hence, supporting the network of NPCR in increasing its signal, expanding its coverage, and improving its network is clearly in the public interest, in that it serves state, local, and federal government – the servants of the people.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. NPCR's application for designation as an Eligible Telecommunications Carrier ("ETC"), as that term is defined in 47 U.S.C. 214(e) and FCC Order 97-157, is hereby GRANTED.
2. NPCR's request for authority to apply for or receive federal universal service funds pursuant to 47 U.S.C. 254 is hereby GRANTED.
3. This Order shall be effective on and after the date of its approval.

**McCARTY, HADLEY, LANDIS, RIPLEY AND ZIEGNER CONCUR:**  
**APPROVED:**

MAR 17 2004

I hereby certify that the above is a true  
and correct copy of the Order as approved.

  
Mary M. Becerra  
Acting Secretary to the Commission

SECRET

LINDA LINGLE  
GOVERNOR



**STATE OF HAWAII**  
**PUBLIC UTILITIES COMMISSION**  
**DEPARTMENT OF BUDGET AND FINANCE**  
465 S. KING STREET, #103  
HONOLULU, HAWAII 96813

CARLITO P. CALIBOSO  
CHAIRMAN

WAYNE H. KIMURA  
COMMISSIONER

JANET E. KAWELO  
COMMISSIONER

June 25, 2004

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission ("FCC")  
445 - 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

Irene Flannery  
Vice President  
High Cost & Low Income Division  
Universal Service Administrative Company  
2000 L Street, N.W. Suite 200  
Washington, D.C. 20036

Re: State of Hawaii ("State"), Public Utilities Commission ("Commission"), Docket No. 03-0104, Application of Nextel Partners for Designation as an Eligible Telecommunications Carrier ("ETC") for its Licensed Service Area of the State

Dear Ms. Dortch and Ms. Flannery:

The Commission respectfully files this letter pursuant to Title 47, Sections 54.313 and 54.314 of the Code of Federal Regulations ("C.F.R.").

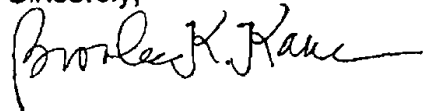
On June 25, 2004, the Commission designated Nextel Partners an ETC, subject to certain conditions. Enclosed is a certified copy of the Commission's Decision and Order No. 21089.

Consistent with federal law and the Commission's Decision and Order No. 21089, Nextel Partners: (1) is eligible to receive federal universal service support; and (2) intends to use such support only "for the provision, maintenance, and upgrading of

Marlene H. Dortch  
Irene Flannery  
June 25, 2004  
Page 2

[its] facilities and services for which the support is intended." 47 United States Code § 254(e); and 47 C.F.R. §§ 54.313 and 54.314. This initial certification applies to federal universal service support provided during the fourth quarter of calendar year 2004. Id.

Sincerely,



Brooke K. Kane  
Administrative Director

Enclosure

c: Nathan T. Natori, Esq., Hawaii Law Group LLC (w/o enclosure)  
State Division of Consumer Advocacy (w/o enclosure)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
NPCR, INC., dba NEXTEL PARTNERS )  
For Designation as an Eligible )  
Telecommunications Carrier in the )  
State of Hawaii. )

DOCKET NO. 03-0104

DECISION AND ORDER NO. 21089

Filed June 25, 2004  
At 3:30 o'clock P.M.

Karon Higash  
Chief Clerk of the Commission



## TABLE OF CONTENTS

I.	BACKGROUND.....	1
II.	NEXTEL PARTNERS.....	2
III.	ELIGIBLE TELECOMMUNICATIONS CARRIER: DESIGNATION.....	3
IV.	NEXTEL PARTNERS' POSITION.....	5
V.	CONSUMER ADVOCATE'S POSITION.....	10
A.	Recommendation: Deny ETC Designation.....	11
1.	Universal Service Goals .....	12
2.	Comparable Service and Rate Plan .....	13
3.	Advertising of Core Services .....	14
4.	Public Interest .....	14
B.	Joint Board's Recommended Decision.....	14
VI.	NEXTEL PARTNERS' RESPONSE: FEDERAL REQUIREMENTS.....	15
A.	Common Carrier Status.....	17
B.	FCC-Designated Core Services.....	17
C.	Advertising.....	17
D.	Nextel Partners' Facilities.....	18
E.	Lifeline and Link Up Programs.....	18
F.	Public Interest.....	19
VII.	NEXTEL PARTNERS' VOLUNTARY COMMITMENTS.....	20
A.	Joint Board's Recommended Decision.....	20
B.	Voluntary Commitments.....	20
VIII.	OTHER JURISDICTIONS.....	25
IX.	DISCUSSION.....	27
A.	Federal Law.....	27
B.	ETC Designation.....	29
C.	Public Interest.....	31
D.	Conditions of ETC Designation.....	32
E.	Designated Service Area.....	35
F.	Annual State Certification.....	36
X.	ORDERS.....	36